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STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

KASAN CONSTRUCTION CORP.,

Respondent.

CASE NO. OSH 2007-4

ORDER NO. 268

ORDER DISMISSING CONTEST

ORDER DISMISSING CONTEST

On October 30, 2007, the Hawaii Labor Relations Board (Board) convened a trial in this matter pursuant to the Notice of Rescheduled Trial, dated October 10, 2007. Deputy Attorney General Leo B. Young appeared for Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (DIRECTOR). Respondent KASAN CONSTRUCTION CORP. (KASAN) failed to appear for the scheduled proceeding.

Based upon the record, the Board makes the following findings of fact, conclusions of law, and order dismissing the instant contest.

FINDINGS OF FACT

1. On January 22, 2007, the DIRECTOR, through the Hawaii Occupational Safety and Health Division (HIOSH), issued a Citation and Notification of Penalty to KASAN for a fall protection violation. HIOSH characterized the violation of 29 CFR 1926.501(b)(13) as "Serious" and imposed a Penalty of \$1,500.
2. By letter dated January 31, 2007, KASAN filed a contest with HIOSH which was received on February 1, 2007.
3. On February 15, 2007, the DIRECTOR filed the contest with the Board.
4. On March 6, 2007, the Board held an initial conference in this matter attended by Complainant's counsel Deputy Attorney General Leo B. Young and

KASAN's owner and representative, Charles W. Lee (Lee). The trial was scheduled in this matter on June 4, 2007 at 9:30 a.m.

5. By letter dated May 30, 2007, Complainant's counsel requested the Board to take the trial off of the calendar because Complainant's witness was on medical leave and Mr. Lee was disabled from a motor vehicle accident. Mr. Lee concurred with the rescheduling of the trial.
6. By letter dated October 8, 2007, Complainant's counsel requested that the trial be reset and on October 10, 2007, the Board rescheduled the trial for October 30, 2007 at 9:00 a.m.
7. On October 25, 2007, Complainant's counsel filed a Motion for Summary Judgment with the Board.
8. On October 30, 2007, the Board convened the trial at approximately 9:04 a.m. Complainant's counsel and witness, Charles Flippo, appeared before the Board and Respondent's representative did not appear. The Board noted that its Notice of Rescheduled Trial (Notice) was issued on October 10, 2007 and the return receipt for the Notice indicated that it was received on October 11, 2007 (by Alice Lee). The Board also noted for the record that no calls were received by its staff from Respondent regarding its nonappearance. Complainant's counsel withdrew his Motion for Summary Judgment filed on October 25, 2007 and made an oral motion to dismiss for lack of prosecution based on the nonappearance of Respondent.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the instant contest pursuant to Hawaii Revised Statutes (HRS) §§ 396-3 and 396-11.
2. A party's refusal to proceed with trial is cause for dismissal. In Richardson v. Lane, 6 Haw.App. 614, 736 P.2d 63 (1987), the Intermediate Court of Appeals affirmed the dismissal of the complaint where the plaintiffs failed to appear on the date of trial but defense counsel and the jury panel were present and plaintiff's counsel represented to the court that plaintiffs had instructed counsel not to participate in the proceeding because their rights to a trial by jury and an impartial judge were being violated.
3. In the instant case, the Board's records indicate that the Notice of Rescheduled Trial was received by Respondent (by Alice Lee) and Respondent failed to appear at the trial scheduled in this matter on October 30, 2007. The Board thus concludes that Respondent thereby abandoned its position of contesting

the Citation and Notification of Penalty issued by HIOSH on January 22, 2007
before this Board.

ORDER

The Board hereby dismisses the instant contest.

DATED: Honolulu, Hawaii, October 31, 2007.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Copies sent to:

Leo B. Young, Deputy Attorney General
Charles W. Lee